VIRGINIA LAW REGISTER.

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REFERRING again to local bar associations in Virginia, we are indebted to the courtesy of L. T. Hyatt, Esq., of Jonesville, for the information that such an association exists also in Lee county.

If the officers of the various local bar associations in the State will supply us with the necessary data, we shall be glad to publish a standing directory of all the associations, with the names and addresses of their officers—including also the State Bar Association in the list. We cannot do this, unless there is a general response to this suggestion.

ON December 9, 1902, the Bar of the Supreme Court of the United States gave a dinner in honor of Mr. Justice Harlan, to commemorate the twenty-fifth anniversary of his accession to a seat on that august tribunal. The occasion was a notable one, and brought together a most distinguished company, including President Roosevelt and members of his cabinet.

Mr. Justice Harlan's career on the bench has been one worthy of a great judge, and has added lustre to the renown of the court, already made illustrious by the distinguished judges who have preceded him.

For diligence in research, for vigor and clearness of thought and expression, directness in apprehending and approaching the point at issue, for the accuracy in the statement of legal doctrine, and for strong, simple, translucent English, the opinions of Mr. Justice Harlan are models of judicial utterance.

The REGISTER unites in tendering to Judge Harlan cordial felicitations upon the completion of his quarter of a century on the bench, and in bespeaking for him yet many years of health, happiness and continued usefulness.

THE judgeship of the Tenth Judicial District of Virginia, embracing the city of Richmond and the county of Henrico, having become prospectively vacant by the appointment of the Hon. Beverley T. Crump to membership in the Corporation Commission, Mr. Richard Carter Scott of the Richmond bar, having first received a majority of the votes of the members of the bar of the city of Richmond and Henrico county, has been chosen by the Democratic caucus of the general assembly as the next incumbent of the office. Mr. Scott is well known to the bench and bar of this State, having filled with ability the office of Attorney General of Virginia after the death of his father, Hon. R. Taylor Scott. The result again vindicates the wisdom of leaving the election of a judge to the lawyers who have known and practised with him—in a word, to the bar of the court. It is gratifying at times, by way of change, to be able to apply legal expressions to persons rather than to propositions, and therefore to write, concerning Mr. Scott's capacity and qualifications for the duties which will be his, *Res ipsa loquitur.*

THE Circuit Court of Appeals for the Ninth Circuit has recently, in the case of *Adger* v. *Ackerman,* 115 Fed. 124, had under consideration the question of the validity of the common law marriage, and has reached a result different from that reached by the Virginia Court of Appeals in *Offield* v. *Davis, ante,* p. 29. The proposition is adjudged to be indisputable that marriage is a civil contract, and like other agreements, may be made without ceremonies, civil or religious, and may be either express or implied. "An implied contract of marriage," says Sanborn, Circuit Judge, "is as binding and effective as one expressed in words or spread upon parchment, and such a contract comes into being whenever the minds of the parties meet in a common understanding of and consent to the present and future existence of the relation of husband and wife between them."

The decision is not necessarily opposed to that of the Virginia Court—since the latter rests on the peculiar wording of the Virginia statute.

Another principle is pronounced to be "established"—and certainly a formidable array of authorities, beginning with *The Breadalbane Case (Campbell* v. *Campbell),* L. R. 1 H. L. Sc. 182,

is brought forward in its support—namely, that where parties who are incompetent to marry (e. g., because of an already existing marriage of one of them) enter upon an illicit relation with a manifest desire and intention to live in a matrimonial union rather than in a state of concubinage, and the obstacle to their marriage is subsequently removed, their continued cohabitation raises a *presumption* of an actual marriage immediately after the removal of the obstacle, and warrants a finding to that effect.

For recent authorities on this subject, *pro* and *con*, see 6 VIRGINIA LAW REGISTER, 863. The question really turns on the existence or non-existence of the matrimonial intent, after the removal of the disability.

IN *Sanders* v. *Coleman*, 97 Va. 690, 5 VIRGINIA LAW REGISTER, 675, it was ruled that if, after the promise made, the condition of the parties has so changed that the marriage state would endanger the *life or health* of either, a breach is excusable. In *Smith* v. *Compton*, 55 Cent. Law Journal, 409, the Court of Errors and Appeals of New Jersey held that nothing will excuse a breach except such a disease, or complication of diseases, as renders the making of the marriage contract and the consummation of the marriage by marital intercourse *impossible*. The excuse assigned in the two cases was substantially the same—a disease of the urinary organs of the defendant. The New Jersey court cites *Sanders* v. *Coleman*, but following *Hall* v. *Wright*, 96 E. C. L. 746, holds that it is not enough to show that the performance of the contract is inconvenient or may be dangerous. "Impossibility alone," says the court, "will constitute an absolute bar. Ill health is the defendant's misfortune, not to be visited beyond what is inevitable, upon the plaintiff. If the plaintiff was willing, in view of his social position, or that which she might acquire by reason of his wealth, to marry him, and await his restoration to health, she had the right to insist upon the benefit of the unconditional contract. If he was apprehensive of danger to his health or life, he could break the engagement, but was subject to such damages as a jury would award against him for the breach. That would, in effect, be a substituted performance in discharge of the obligation incurred. This is in consonance with the well established rule which

governs contracts and, unless it is adhered to, the loss falls upon the party *to whom no fault* can be imputed."

An extended note to *Smith* v. *Compton, ubi supra,* asserts that the weight of authority sustains the doctrine of *Sanders* v. *Coleman.* An editorial note to the report of the latter case in 5 VIRGINIA LAW REGISTER, 675, makes the same comment, citing *Allen* v. *Baker,* 86 N. C. 91, 41 Am. Rep. 444, and *Shackelford* v. *Hamilton,* 93 Ky. 80, 40 Am. St. Rep. 444. The annotator in the *Central Law Journal* cites the following additional cases: *Gardner* v. *Arnett,* 50 S. W. 840; *Kantlher* v. *Grant,* 2 Ill. App. 236; *Goddard* v. *Westcott,* 82 Mich. 180; *Gulick* v. *Gulick,* 41 N. J. Law, 13; *Gring* v. *Lerch,* 112 Pa. 244; *Martin* v. *Webster,* 129 Ind. 430.

THE Orphans Court of Alleghany County, Pennsylvania, ruled recently upon an interesting point in connection with the rights of adopted children. In 1885 a grandfather, by petition to court in the regular manner, adopted his grandchild as his child, being one of the children of a deceased daughter. In 1901 the grandfather died intestate, leaving to survive him a widow and two daughters. The adopted child claimed to share in the estate of her adopted father in the dual capacity of child and grandchild. It was held that there was nothing in the adoption act of May 19, 1887, or the statute of inheritance of April 8, 1833, to prevent her from so claiming, and that she was entitled to take as an adopted child one-fourth of the estate and one-eighth of the estate as grandchild of decedent. 33 Pittsburg L. J. 128.

The opinion of the court is not given, but the ruling is in accord with that of *Wagner* v. *Varner,* 50 Iowa, 532. We see nothing in the Virginia statute (Acts 1897-8, p. 38, Pollard's Supp., sec. 2614 *a*) to negative the probability of a similar construction upon the same facts.

Statutes relating to adoption have been assailed for unconstitutionality, but without success. The point has also been made that they are in conflict with the statutes of descents, but this also has been resolved in the negative (*Fosburgh* v. *Rogers,* 114 Mo. 122, 19 L. R. A. 201), on the ground that they merely point out who are to be considered "children" within the meaning of the last named statutes. The Virginia statute, *supra,* provides that after adoption, "the natural parents shall be divested of all legal rights and obliga-

tions in respect to the child and the child be free from all legal obligations of obedience and maintenance in respect to them; such child shall be to all effects and purposes the child and heir at law of the person so adopting him," etc. Should the natural parents, after their surrender of the child and its adoption by the adoptive parents, die intestate but possessed of property, could the child still inherit from them? We find no ruling upon the point. The parents are by our statute divested of all legal rights and obligations *quoad* the child, but the legal rights of the child are not taken away—only his *obligations*. A strict construction would be given the statute, and it would seem that the child could inherit from both natural and adopted parents.

This question, with numerous others arising under the Virginia Statute, is discussed in 1 VIRGINIA LAW REGISTER, 462. As there shown, the statute is most inartistically drawn, and will hereafter be a fruitful source of litigation. See also 5 Va. L. R. 571.

WE have frequent inquiries as to the right of lawyers who have been admitted to the bar in other States, to practise in Virginia.

The latest statute on the subject has possibly escaped public attention by reason of its omission from the index of the Session Acts in which it is published. It is found in Acts 1899-00, p. 433, and is printed in full below.

The Act permits non-resident counsel to appear in occasional cases in association with a resident practitioner—but no lawyer is permitted to practise regularly in this State, whether admitted and practising in another State or not, unless he passes the regular bar examination here—save that one who has practised for three years before the Supreme Court of any State may be licensed to practise here by our Supreme Court without examination. It is, however, discretionary, in every case, with the Supreme Court, whether it will require an examination of such a person or not.

The Act reads as follows:

Any person duly authorized and practising as counsel or attorney at law in any State or territory of the United States, or in the District of Columbia, may, for the purpose of attending to any case he may occasionally have in association with a practising lawyer of this State, practise in the courts of this State.

But no person shall be permitted to practise as attorney at law, whether he resides in this State or not, until he shall have passed an examination before

three or more judges of the Supreme Court of Appeals, as required by section 3191, as amended [by sundry Acts described] and paid the license tax prescribed by law; but the Supreme Court of Appeals shall have discretion to grant a certificate, without examination, to any lawyer who has practised before the Supreme Court of any State or territory of the United States or the District of Columbia for three years, which certificate shall entitle the holder, after paying his license [tax], to practise in the courts of this State. But this Act shall not apply to any lawyer now practising or entitled to practise law in the courts of this State.

The evils which this legislation was intended to meet were pointed out in 4 VIRGINIA LAW REGISTER, 326.